

TO AMEND THE JUDICIAL CODE BY ADDING A NEW
SECTION TO BE NUMBERED 274D

FEBRUARY 10, 1925.—Referred to the House Calendar and ordered to be printed

MR. MONTAGUE, from the Committee on the Judiciary, submitted
the following

REPORT

[To accompany H. R. 5194]

The Committee on the Judiciary, to which was referred H. R. 5194, having considered the same, orders it to be favorably reported with the recommendation that the bill do pass.

The bill is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Judicial Code approved March 3, 1911, is hereby amended by adding after section 274C thereof a new section to be numbered 274D, as follows:

"SEC. 274D. (1) In cases of actual controversy in which, if suits were brought, the courts of the United States would have jurisdiction, the said courts upon petition shall have jurisdiction to declare rights and other legal relations on request of interested parties for such declarations whether or not further relief is or could be prayed, and such declarations shall have the force of final decree and be reviewable as such.

"(2) Further relief based on declaratory decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

"(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

"(4) The Supreme Court may adopt rules for the better enforcement and regulation of this provision."

The bill fairly discloses its purpose and scope. It extends the judicial power for the rendition of what is known as "declaratory judgments," a procedure which has been adopted in some form by 12 of the American States, by Great Britain for over 35 years, by Scotland for nearly 400 years, by several European nations, and by India, Australia, and Canada, and wherever adopted it has given

pronounced satisfaction in that it has accomplished most wholesome simplification and expedition in the administration of justice. Indeed, the delay in the exercise of this power and procedure by all of the States and by the Federal Government is difficult to appreciate.

The principle involved in this form of procedure is to confer upon the courts the power to exercise in some instances preventive relief, a function now performed rather clumsily by our equitable proceedings and inadequately by the law courts.

A most simple and striking definition of the procedure is thus made by Professor Borchard, of the Yale University School of Law. He writes:

The declaratory judgment, it will be recalled, enables parties who are uncertain of their legal rights and are pecuniarily or otherwise prejudiced by actual or potential adverse claims by others to invoke the aid of the courts for the determination of their rights before an injury has been done.

Therefore, this form of preventive relief is distinguishable from curative relief in that the latter is incapable of redress until an injury has occurred or the contract broken.

The bill under consideration does not exhaust the principles involved in support of "declaratory judgments," but is a modified effort to secure relief by such procedure. The first section confines relief to actual, not potential controversies; and the procedure may be invoked whether or not further consequential relief should be had, though a declaratory judgment has the force and effect of a final judgment or decree. Again, large discretion is conferred upon the courts as to whether or not they will administer justice by this procedure, and the Supreme Court is specifically empowered to adopt rules for its better enforcement and regulation.

The "declaratory judgment" is a useful procedure in determining jural rights, obligations, and privileges, but may be applied to the ascertainment of almost any determinative fact or law. The declaration of a status was perhaps the earliest exercise of this procedure, such as the legality of marriage, the construction of written instruments, and the validity of statutes. It is intended to save tedious and costly litigation by ascertaining at the outset the controlling fact or law involved, thus either concluding the litigation or thereafter confining it within more precise limitations. If the meaning of a contract is controverted, for example, it may be needless to break it in order to obtain authoritative construction of the instrument, thus saving time and cost. These and other instances, together with the successful experience of the States which have used the procedure, make it most desirable that this legislation should be enacted.